United Nations A/HRC/27/23

General Assembly

Distr.: General
30 June 2014

Original: English

Human Rights Council
Twenty-seventh session
Agenda items 2 and 3
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Question of the death penalty

Report of the Secretary-General

Summary

Pursuant to Human Rights Council decision 18/117, the present report is submitted in order to update previous reports on the question of the death penalty. The report confirms that the trend towards the universal abolition of the death penalty is continuing. However, numerous concerns remain with regard to the lack of respect for international human rights norms and standards in States that still impose the death penalty. As requested in Human Rights Council resolution 22/11, the report also includes information on the human rights of children of parents sentenced to the death penalty or executed.

GE.14-06851 (E)

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I. Introduction

1. Pursuant to Human Rights Council decision 18/117, the present report is submitted to update previous reports on the question of the death penalty, including the last quinquennial report of the Secretary-General (E/2010/10 and Corr.1 and 2) and reports submitted to the Council (A/HRC/4/78, A/HRC/8/11, A/HRC/12/45, A/HRC/15/19, A/HRC/18/20, A/HRC/21/29 and A/HRC/24/18).

2. Pursuant to Human Rights Council resolution 22/11, the report also includes information on the human rights of children of parents sentenced to the death penalty or executed.

3. The report covers the period from June 2013 to May 2014 and is based on information received from States and other relevant sources, including national human rights institutions, United Nations agencies, international and regional intergovernmental bodies and non-governmental organizations. Attention is drawn to the forthcoming report of the Secretary-General to the General Assembly on a moratorium on the use of the death penalty, which will outline national and international efforts made towards the implementation of General Assembly resolution 67/176 on a moratorium.

II. Changes in law and practice

4. Changes in law include new legislation abolishing or reinstating the death penalty, restricting it or expanding its scope, as well as ratification of international and regional human rights treaties that provide for the abolition of the death penalty. Changes in practice comprise mainly non-legislative measures, including executive and judicial measures, reflecting a new approach regarding the use of the death penalty.

A. Member States that have abolished the death penalty for all crimes

5. Some 160 States have abolished or introduced a moratorium on the death penalty either in law or in practice, or have suspended executions.

B. Member States that have restricted the scope of the death penalty or are limiting its use

6. In several de facto abolitionist States, as well as in States that continue to apply the death penalty, some noticeable initiatives restricting its use were recorded during the reporting period.

7. In Antigua and Barbuda, the Offences against the Person (Amendment) Act, 2013 was amended to remove the mandatory imposition of the death penalty.[1] Bangladesh abolished the death penalty for children by enacting the Children Act 2013.[2]

[1] The bill was adopted by the House of Representatives on 30 August 2013 and by the Senate on 12 September 2013. The final version of the Act is available from http://laws.gov.ag/acts/2013/a2013-4.pdf.

[2] Section 52 of Act No. 24 of 2013 states: "Notwithstanding anything to the contrary contained in any law, no child shall be sentenced to death, transportation or imprisonment".

8. In Benin,[3] Comoros (A/HRC/26/11, para. 10), Mongolia[4] and Suriname,[5] draft laws to remove the death penalty from national laws are currently under consideration. Viet Nam reported that it is drafting amendments to its Penal Code to reduce the number of crimes punishable by death.

9. In Sri Lanka, the Ministry of Justice appointed a special committee in October 2013 to review the Penal Code with a view to abolishing the death penalty. In June 2013, the National Assembly of Tajikistan established a working group to study public opinion on the death penalty. In China, the authorities passed a resolution affirming their intention to progressively reduce the number of crimes punishable by death. As part of its reporting to the Human Rights Council, China noted that it would continue its efforts in that regard in accordance with its economic and social development (A/HRC/25/5/Add.1, para. 186.17). Thailand reported that it intended to propose legislation to abolish the death penalty.[6]

10. In many States, a constitutional reform process provided an opportunity for discussions on the death penalty and led to proposals to abolish or restrict the use of the death penalty. For example, in Zimbabwe, a new Constitution was adopted in 2013. It provides for the death penalty only for murder committed in aggravating circumstances and prohibits its imposition on women or on men who were under 21 or over 70 years at the time of the commission of the crime. In Ghana, the Constitutional Review Implementation Committee submitted a draft bill for the amendment of the 1992 Constitution, in which it recommended replacing the death penalty with life imprisonment.[7] Sierra Leone indicated that the current review of its Constitution would present an opportunity for the examination of the question of the death penalty.[8]

11. In some States, the judiciary restricted the scope of the use of the death penalty. For instance, the High Court of Botswana declared that the mandatory death penalty (sect. 203 of the Penal Code) was unconstitutional.[9] In India, the Supreme Court issued a ruling recognizing that poverty, socioeconomic or psychic compulsions and undeserved adversities in life are some of the mitigating factors to be considered as a basis for commuting a convict's death sentence to life imprisonment.[10] The Supreme Court of India also adopted guidelines on clemency and the treatment of death row prisoners.[11] In Uganda, sentencing guidelines for courts of judicature were issued with the aim of strengthening humane, predictable and consistent sentencing. The guidelines include special rules on

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[3] Statement of the Minister of Justice, Human Rights and Legislation of Benin, delivered at the Human Rights Council on 5 March 2014.

[4] Statement of the State Minister of Justice of Mongolia, delivered at the Human Rights Council on 5 March 2014.

[5] Reported in April 2014 by the International Commission against the Death Penalty.

[6] Information provided at a seminar on moving away from the death penalty in South-East Asia, jointly organized in Bangkok in October 2013 by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Ministry of Justice of Thailand.

[7] See Ghana, Constitution Review Commission, *Report of the Constitution Review Commission: From a political to a developmental constitution*, executive summary and p. 644, para. 69 (2014). Available from www.ghana.gov.gh/images/documents/crc_report.pdf.

[8] Statement of the Minister for Foreign Affairs of Sierra Leone, delivered on 5 March 2014.

[9] High Court of Botswana, *State v. Rodney Masok*, case No. CTHFT-000008-07, judgement delivered by Justice Tshepo Motsagole on 2 October 2013.

[10] Supreme Court of India, Criminal Appellate Jurisdiction, *Sunil Damodar Gaikwad v. State of Maharashtra*, criminal appeal Nos. 165-166 of 2011, judgement issued on 10 September 2013.

[11] *Shatrughan Chauan and Anr v. Union of India and Ors*, writ petition (criminal) No. 55 of 2013, decided on 21 January 2014.

mitigation and recommend the application of the death sentence only in exceptional circumstances.[12]

C. Member States that have ratified or committed themselves to ratifying international instruments providing for the abolition of the death penalty

12. As of 30 May 2014, 81 States had ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.[13]

13. During the reporting period, Bolivia (Plurinational State of), Gabon, Guinea-Bissau, El Salvador and Poland acceded to the Second Optional Protocol, and Angola signed it.

14. During the universal periodic review process of the Human Rights Council, several States, including the Central African Republic (A/HRC/25/11, paras. 104.2–104.11), the Congo (A/HRC/25/16, paras. 111.9–111.18), Cambodia (A/HRC/26/16, para. 118.1 and 118.2), Comoros (A/HRC/26/11, paras. 110.1–110.10), Côte d'Ivoire (A/HRC/27/6, para. 128.8–128.9) and Equatorial Guinea (A/HRC/27/13, para. 134.38), accepted recommendations to ratify the Second Optional Protocol.

D. Member States that have introduced moratoriums on or suspension of executions

15. The Government of Equatorial Guinea adopted presidential resolution 426 of 13 February 2014, in which it established a temporary moratorium on the application of the death penalty and expressly called for the imposition of prison terms instead of the death penalty. The Government of Pakistan decided to continue its moratorium on the use of capital punishment. The President of the United Arab Emirates ordered a general stay on executions. In the United States of America, the Governor of the State of Washington announced the introduction of a moratorium on the death penalty in February 2014.

E. Member States that have reintroduced the use of the death penalty, extended its scope or resumed executions

16. During the reporting period, the scope of the death penalty was expanded in Algeria, Brunei Darussalam, Bahrain, Bangladesh, India, Maldives, Nigeria, Papua New Guinea, the Sudan and the United States of America.

17. In Algeria, an amendment to the Penal Code was adopted in December 2013 to impose the death penalty for kidnappers of children if the victims were later found dead. Bahrain adopted a law that expanded the scope of capital punishment to include individuals responsible for bomb attacks that have caused casualties.[14] Bangladesh enacted the Children Act 2013, which allows capital punishment for the authors of acts of terrorism using children. In Nigeria, laws were adopted making kidnapping a capital crime in the Bayelsa, Edo and Delta States.

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[12] Uganda, Constitution (Sentencing guidelines for courts of judicature) (Practice) Directions, 2013.

[13] For the status of ratification, see http://treaties.un.org.

[14] Decree No. 20 of 31 July 2013.

18. Brunei Darussalam adopted a new penal code that imposes the death penalty for numerous offences. The new code also introduces stoning to death as the specific method of execution for rape, adultery, sodomy and extramarital sexual relations.

19. Papua New Guinea extended capital punishment to sorcery-related killings, aggravated rape and robbery with violence; it also approved new means of execution, including lethal injection, hanging, electrocution, firing squad and death by deprivation of oxygen.[15] The Office of the United Nations High Commissioner for Human Rights (OHCHR) expressed regrets over Papua New Guinean legislative action to resume the use of the death penalty and noted that such measures marked a significant regression in the human rights progress that Papua New Guinea had made, and contradicted the global trend towards the abolition of the death penalty.[16]

20. Maldives adopted a new regulation in April 2014 that provides for the imposition of the death penalty for intentional murder, even for individuals who are under 18. OHCHR expressed deep concern about the new regulation of Maldives to implement the death penalty, which ended the country's 60-year moratorium on the death penalty.[17]

21. In the United States of America, a law known as the Timely Justice Act was adopted in the State of Florida, which requires the Governor to sign a death warrant within 30 days of the conclusion of clemency review and to schedule execution within 180 days of the issuance of the warrant.

III. Making information on the use of the death penalty available

22. In accordance with General Assembly resolution 67/176, States should make available relevant information with regard to their use of the death penalty, including accurate data on the number of persons sentenced to death, the number of persons on death row and the number of executions.

23. During a panel discussion on the human rights of children of parents sentenced to the death penalty or executed, convened by the Human Rights Council in September 2013 at its twenty-fourth session, several States and non-governmental organizations, noted that the Human Rights Committee, the Committee against Torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment had all expressed concerns regarding the lack of transparency surrounding executions. They also recalled that the human rights mechanisms viewed the failure to provide information concerning executions as amounting to a violation of international human rights law (see A/HRC/25/33, para. 25).

24. However, as noted by the Secretary-General in previous reports (A/HRC/4/78, A/HRC/8/11, A/HRC/12/45, A/HRC/15/19, A/HRC/18/20, A/HRC/21/29 and A/HRC/24/18), it is difficult to obtain up-to-date and accurate global figures on the application of the death penalty, owing to the continued lack of transparency on the part of some Governments. In Belarus, China and Viet Nam, data on the use of the death penalty is classified as a State secret, the disclosure of which constitutes a criminal offence. Furthermore, difficulties in obtaining information are compounded in countries affected by conflict, where it may not

[15] Amnesty International, "Papua New Guinea: keep the Pacific free of death penalty". Available from www.amnesty.org.nz/our-work/end-death-penalty/papua-new-guinea.

[16] UN News Centre, "Papua New Guinea's plans to resume death penalty 'major setback' – UN", 17 May 2013. Available from www.un.org/apps/news/story.asp?NewsID=44930.

[17] UN News Centre, "Maldives should repeal new regulation providing for death penalty, says UN rights office" 29 April 2014. Available from www.un.org/apps/news/story.asp?NewsID=47680.

be possible to obtain sufficient reliable information to confirm the number of executions and other relevant details.

25. Furthermore, information regarding the actual date of executions is reportedly withheld from family members and lawyers of death row prisoners until the completion of the executions in some States, including Belarus, Indonesia, Japan, Malaysia, South Sudan and Viet Nam. The Special Rapporteur on the situation of human rights in Belarus expressed concern about the circumstances of the execution of a death row prisoner in April 2014. Reportedly, the date of his execution was not known to his family members and lawyers, who only learned about it after the sentence had already been carried out. The Special Rapporteur noted that the way the death penalty was carried out in that case amounted to inhuman treatment.[18] During the universal periodic review process of the Human Rights Council, Botswana accepted the recommendation to provide information to concerned families, so that they know in advance the date of execution of their relatives (A/HRC/23/7 and Corr.1, para. 115.60).

IV. Imposition of the death penalty

26. During the reporting period, executions were carried out in at least 22 States. Some States resumed executions[19] after a few years' suspension. In his report to the Human Rights Council (A/HRC/25/26) on the situation of human rights in the Islamic Republic of Iran, the Secretary-General expressed his concern at the sharp rise in executions in that country. He noted that the new Government continued the previous administrations' heavy reliance on the death penalty to combat crimes (see also A/HRC/23/47/Add.5). A significant increase in the number of executions was also reported in Iraq for individuals convicted under the Anti-Terrorism Law.[20] The United Nations Assistance Mission in Iraq and the United Nations High Commissioner for Human Rights have repeatedly and publicly reported that the international safeguards protecting the rights of those facing the death penalty are not implemented in the country.[21]

27. Despite its recent amendments to criminal laws and procedures, aimed at restricting the application of the death penalty, China, according to some sources, has continued to execute thousands of individuals annually.[22]

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[18] Press release, "Halt further executions – UN expert calls on Belarus for an immediate death sentence moratorium", 25 April 2014. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14537&LangID=E.

[19] Belarus, Equatorial Guinea, Indonesia, Kuwait, Malaysia, Nigeria, United Arab Emirates and Viet Nam.

[20] Act No. 13/2005, art. 4.

[21] OHCHR/United Nations Assistance Mission for Iraq Human Rights Office, "Report on Human Rights in Iraq: July-December 2012", June 2013, pp. 8–10 and 12–15; "Report on Human Rights in Iraq: January-June 2013", August 2013, pp. 6–7.

[22] Amnesty International, "Death Sentences and Executions 2013" (AI Index: ACT 50/001/2014) , p. 19. See also Hands Off Cain, "Death Penalty Worldwide 2014 Report", Rome, March 2014 (draft submitted to the Secretariat as contribution for the current report).

V. Application of safeguards guaranteeing protection of the rights of those facing the death penalty

A. Restriction of use of the death penalty to "most serious crimes"

28. In accordance with article 6, paragraph 2, of the International Covenant on Civil and Political Rights, States that have not yet abolished the death penalty should only impose it for the "most serious crimes". In international human rights jurisprudence, that term has been interpreted as allowing the death penalty to be applied only to the crime of murder or intentional killing.[23] However, the death penalty continues to be applied in some countries for crimes or acts not involving intentional killings, such as "drug-related offences", "consensual sexual acts", economic and political crimes, robbery, blasphemy, witchcraft and sorcery.

1. Use of the death penalty for "drug-related offences"

29. Drug-related offences do not meet the threshold of "most serious crimes" (see A/50/40, para. 449, and A/55/40 (Vol. I), para. 464). There is no persuasive evidence that the use of the death penalty is a greater deterrent than other methods of punishment in eradicating drug trafficking or other drug-related offences. Nevertheless, 32 countries or territories[24] continue to impose the death penalty for drug-related offences in their legislation. In some countries, drug offences account for the majority of death sentences handed down and executions carried out.

30. Human rights treaty bodies continue to address the issue of the use of the death penalty for drug crimes. For instance, the Human Rights Committee recommended that Indonesia review its legislation to ensure that crimes involving narcotics are not punishable by death (CCPR/C/IDN/CO/1, para. 10).

31. The International Narcotics Control Board discussed the imposition of the death penalty for drug-related offences at its 109th session, held in February 2014. Subsequently, in a note verbale addressed to all Member States issued on March 2014, the Board encouraged States that still imposed the death penalty for drug-related offences to abolish that punishment.

2. Use of the death penalty for consensual sexual acts between adults

32. The use of the death penalty for acts in connection with consensual sexual relations and activities do not meet the threshold of "most serious crimes." At least 10 States[25] continue to impose and carry out the death penalty in connection with actual or purported engagement in consensual sexual acts, such as "adultery" and "sodomy". Laws criminalizing actual or purported engagement by adults in consensual sexual relations, including extramarital sex and premarital sex, contravene international human rights law and standards (see, for example, A/53/40 (Vol. I), para. 119).

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[23] See E/2010/10, paras. 59–68 for further information on "most serious crimes".

[24] Bahrain, Bangladesh, Brunei Darussalam, China, Cuba, Egypt, State of Palestine (Gaza), India, Indonesia, Islamic Republic of Iran, Iraq, Kuwait, Lao People's Democratic Republic, Libya, Malaysia, Myanmar, the Democratic People's Republic of Korea, Oman, Pakistan, Qatar, the Republic of Korea, Saudi Arabia, Singapore, Sri Lanka, the Sudan, Syrian Arab Republic, Taiwan Province of China, Thailand, United Arab Emirates, United States of America, Viet Nam and Yemen.

[25] Afghanistan, Brunei Darussalam, the Islamic Republic of Iran, Mauritania, Nigeria, Pakistan, Saudi Arabia, Somalia, Sudan and Yemen.

33. In addition, although the language of such laws may be gender neutral and may not appear to directly discriminate against women, in practice, their application and enforcement often disproportionately affect women's enjoyment of their rights. Studies repeatedly demonstrate that women are more likely to be sentenced to death for such crimes, owing to deeply entrenched discriminatory societal attitudes and the biases against women suspected of adultery or of engaging in extramarital relationships among the judiciary and law enforcement officers (A/HRC/23/49/Add.5, para. 6).[26]

34. Imposition of the death penalty for offences relating to consensual adult homosexual conduct continues to be provided for in the legislation of a few States. The Human Rights Committee expressed concerns that, in Mauritania, homosexuality is a crime punishable by death. Such punishment violates the provisions of the International Covenant on Civil and Political Rights (arts. 2, 6, 17 and 26) and the Committee recommended that Mauritania decriminalize homosexuality (CCPR/C/MRT/CO/1, para. 8). While reviewing a periodic report of the Islamic Republic of Iran, the Committee on Economic, Social and Cultural Rights expressed concern over the criminalization of consensual same-sex sexual activity and the possibility that convicted persons may be subject to the death penalty (E/C.12/IRN/CO/2, para. 7).

3. Use of the death penalty for blasphemy, apostasy and religious offences

35. In some countries, conversion from Islam or the renunciation of Islam is considered apostasy and a capital crime. The death penalty has also been extended on the basis of sharia law to cases of blasphemy. According to international human rights jurisprudence, none of those crimes meets the threshold of "most serious crimes." (CCPR/C/79/Add.85, para. 8).

36. Twelve States have continued to impose the death penalty for the "crime" of apostasy: Afghanistan, the Islamic Republic of Iran, Malaysia,[27] Maldives, Mauritania, Nigeria,[28] Qatar, Saudi Arabia, Somalia, the Sudan, the United Arab Emirates and Yemen.[29] Five States continued to allow capital punishment for blasphemy: Afghanistan, Brunei Darussalam, the Islamic Republic of Iran, Pakistan, Saudi Arabia and the United Arab Emirates. In four States, armed groups were also implementing sharia punishment, including death, for "offences" to religion: Al-Shabaab in Somalia, Boko Haram and other armed groups in Nigeria, the Taliban in Afghanistan and jihadist groups in the Syrian Arab Republic.

4. Use of the death penalty for "acts of terrorism"

37. Serious concerns have been raised, including by United Nations human rights bodies and mechanisms, about the adoption and application in many States of legislation containing overly broad and vague definitions of terrorist offences. The High Commissioner for Human Rights has noted that such laws fail to comply with the principle of legality, as they do not provide reasonable notice of what actions they cover, or are so broad that they cover actions that either should not reasonably be deemed terrorist in nature or not considered to be crimes at all (A/HRC/22/26, paras. 21 and 34). In such cases, the

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[26] See also submission to OHCHR of Women Living under the Muslim Laws and the International Solidarity Network dated 15 December 2013.

[27] Despite contradicting federal law, the State governments of Kelantan and Terengganu passed laws in 1993 and 2002, respectively, making apostasy a capital offence.

[28] In 12 northern States.

[29] See International Humanist and Ethical Union, "Freedom of thought 2013: A global report on the rights, legal status, and discrimination against humanists, atheists, and the non-religious", 2014.

application of the death penalty remains a serious concern, in particular where such acts do not meet the threshold of "most serious crimes", and may amount to violations of article 6 of the International Covenant on Civil and Political Rights.

38. Executions relating to acts of terrorism or crimes of a political nature were carried out in Bangladesh, Belarus, China, the Islamic Republic of Iran, Iraq, India, Somalia and the Sudan, and possibly in other countries. Furthermore, hundreds of death sentences were handed down, albeit not carried out, in terrorism-related cases in Algeria, Bangladesh, Egypt, Pakistan, Lebanon and Libya.

39. Concerns have been raised over the adoption of new counter-terrorism legislation or the amendment of existing laws in Bahrain, Bangladesh, Nigeria and the Syrian Arab Republic which prescribe the death penalty for overly broad or vaguely defined "terrorist" activities.

5. Mandatory use of the death penalty

40. According to the jurisprudence of human rights mechanisms, the mandatory use of the death penalty is not compatible with the limitation of capital punishment to the "most serious crimes".[30] Nevertheless, the Islamic Republic of Iran, Kenya, Malaysia, Nigeria, Pakistan and Singapore continue to impose mandatory death sentences.[31]

41. The Human Rights Committee continues to address the issue in its individual communications. In one case involving the imposition of a mandatory death sentence for acts of murder in Ghana, the Committee referred to its jurisprudence that the automatic and mandatory imposition of the death penalty constituted arbitrary deprivation of life, in violation of article 6, paragraph 1, of the International Covenant on Civil and Political Rights. Laws that impose the death penalty without any possibility of the defendant's personal circumstances or the circumstances of the particular offence being taken into account[32] constitute violations of the right to life under the Covenant.[33]

42. During its universal periodic review, Barbados accepted the recommendation that it eliminate the mandatory death penalty (A/HRC/23/11/Add.1, para. 18). Uganda proposed the Law Revision (Penalties in Criminal Matters) Miscellaneous Amendment Bill 2013 to repeal mandatory death penalty provisions.

B. Fair trial guarantees

43. The imposition of a death sentence upon the conclusion of a trial in which the provisions of article 14 of the International Covenant on Civil and Political Rights have not been respected constitutes a violation of the right to life.[34] Furthermore, forcing an

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[30] See E/2010/10 for a detailed discussion on the relevant human rights jurisprudence.

[31] Amnesty International, op. cit., p. 11.

[32] See, inter alia, communications No. 1520/2006, *Mwamba v. Zambia*, Views adopted on 10 March 2010, para. 6.3; No. 1132/2002, *Chisanga v. Zambia*, Views adopted on 18 October 2005, para. 7.4; No. 845/1998, *Kennedy v. Trinidad and Tobago*, Views adopted on 26 March 2002, para. 7.3; and No. 806/1998, *Thompson v. Saint Vincent and the Grenadines*, Views adopted on 18 October 2000, para. 8.2.

[33] See communication No. 2177/2012, *Johnson v. Ghana*, Views adopted on 27 March 2014.

[34] Human Rights Committee, communications No. 1044/2002, *Shakurova v. Tajikistan*, Views adopted on 17 March 2006; No. 915/200, *Ruzmetov v. Uzbekistan*, Views adopted on 30 March 2006; No. 913/2000, *Chan v. Guyana*, Views adopted on 31 October 2005; No. 1167/2003, *Rayos v. Philippines*, Views adopted on 27 July 2004. See also its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial.

individual to make or sign, under duress, a confession admitting guilt violates both article 7 (prohibiting torture and inhuman, cruel or degrading treatment) and article 14, paragraph 3 (g) (prohibiting compulsion to testify against oneself or confess guilt) of the Covenant.[35]

44. Bahrain, the Democratic Republic of the Congo, Egypt, Iraq, Qatar, the Sudan and the Syrian Arab Republic provided information regarding the legal guarantees and safeguards provided in their respective jurisdictions. Such guarantees and safeguards include the right to public trial, the right to legal presentation and counsel, including the provision of a counsel financed by the State, respect for the principle of presumption of innocence, the right to appeal and freedom from torture.[36]

45. In some States where individuals were sentenced to death or executed, however, the death penalty was imposed after proceedings that may not meet international fair trial standards. In many cases, sentences were based on "confessions" that were allegedly extracted through torture or other ill-treatment. Other prevalent global issues include failure to supply qualified interpreters for court hearings, failure to provide a written record of proceedings, inconsistent and unfair sentencing practices, failure to accept or consider mitigating factors, the absence of a meaningful legal aid framework resulting in indigent defendants being effectively deprived of legal representation and the imposition of the death penalty by military and special courts and tribunals.

46. United Nations human rights mechanisms have continued to express concern over the lack of fair trial in death penalty cases in a number of States. For instance, in November 2013, the High Commissioner for Human Rights urged the Government of Bangladesh not to implement death sentences in cases before the International Crimes Tribunal, particularly given concerns over the fairness of the trials. She emphasized that the tribunal should ensure the highest standards of proceedings, if it was to reinforce the rule of law in Bangladesh and the fight against impunity for the mass atrocities committed in 1971. Subsequently, two Human Rights Council special procedure mandate holders expressed similar concerns that the International Crimes Tribunal of Bangladesh did not uphold the most stringent fair trial and due process guarantees.[37]

47. The High Commissioner for Human Rights also expressed concern about the imposition of the death penalty by courts in the Gaza Strip in the State of Palestine. She emphasized that the death penalty could only be imposed after a fair trial, which is currently not legally or practically possible in Gaza. She also expressed serious concern about ill-treatment and torture during the interrogation of persons later sentenced to death, and urged the authorities in the Gaza Strip not to carry out planned executions and to implement a moratorium.[38]

48. With regard to the executions that took place in Somalia in March 2014, OHCHR expressed concerns that the hasty judicial process, in which there were only nine days between the alleged killings and the executions, had deprived suspects of full fair trial guarantees, including the right to legal representation and the right to appeal.

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[35] Human Rights Committee, general comment No. 32.

[36] Submissions from those States are available from the Secretariat for consultation.

[37] "UN human rights experts urge Bangladesh to stop the execution of Abdul Quader Mollah", press release, 9 December 2013. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14077&LangID=E.

[38] "UN human rights chief Navi Pillay urges Hamas to halt Gaza executions", press release, 14 August 2013. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13628&LangID=E.

49. The Special Rapporteur on extrajudicial, summary or arbitrary executions and other Human Rights Council special procedure mandate holders also urged several States, including Belarus,[39] Egypt,[40] the Democratic People's Republic of Korea,[41] the Islamic Republic of Iran[42] and Papua New Guinea[43] to maintain stringent respect for due process and fair trial guarantees in death penalty cases.

Arbitrary use of the death penalty in mass trials

50. During the reporting period, a new phenomenon of sentencing large groups of individuals in mass trials emerged and led to major concerns that such mass trials violate the international human rights standards of fair trial guarantees and other safeguards. In Viet Nam, 33 people were sentenced to death for drug trafficking in a mass trial, reportedly without any adequate legal representation. In Bangladesh, a special court set up to prosecute crimes committed during a mutiny in Dhaka in 2009 sentenced 152 paramilitary personnel to death in November 2013. A trial court in Egypt imposed death sentences on more than 1,000 people in two mass trials for the alleged killing of a police officer and other violent activities committed during the country's 2013 political crisis.

51. Those trials were marred by procedural irregularities, including lack of adequate and timely access to lawyers, and instances of trials in absentia. In many cases, reports indicated that a number of suspects who were detained in custody died after they were tortured. The courts that conducted the mass trials also admitted evidence obtained under torture. Furthermore, the exact charges against each defendant were not clear, given that, in many cases, they were not individually read out in court. The courts also did not adhere to the presumption of innocence. Pursuant to general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial of the Human Rights Committee, the presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt and requires that persons accused of a criminal act must be treated in accordance with that principle.

52. The Secretary-General, the High Commissioner for Human Rights and Human Rights Council special procedure mandate holders expressed serious alarm concerning the imposition of the death penalty during those mass trials. In her statement regarding the mass trial in Bangladesh for the alleged perpetrators of a mutiny in 2009, the High

[39] "Belarus / Death penalty: UN expert calls to stop executions after recent court rulings", press release, 9 October 2013. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13840&LangID=E.

[40] "Egypt: Mass death sentences – a mockery of justice", press release, 31 March 2014. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14457&LangID=E.

[41] "'High-profile execution in North Korea is just one among many other cases,' UN experts warn", press release, 18 December 2013. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14117&LangID=E.

[42] "'Stop the executions' – UN rights experts alarmed at the sharp increase in hangings in Iran", press release, 22 January 2014. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14190&LangID=E. "UN Expert calls on Iran to halt execution of Iranian woman expected to take place tomorrow", press release, 14 April 2014. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14509 &LangID=E.

[43] Press statement, "Preliminary observations on the official visit to Papua New Guinea by Christof Heyns, Special Rapporteur on extrajudicial, summary or arbitrary executions, 3–14 March 2014", 14 March 2014, Port Moresby.

Commissioner stated that the crimes committed during the mutiny were utterly reprehensible and heinous, but that conducting mass trials of hundreds of individuals, torturing suspects in custody and sentencing them to death after trials that failed to meet the most fundamental standards of due process did not achieve justice.[44]

53. With regard to the mass sentencing in Egypt in March 2013, the High Commissioner and special procedure mandate holders expressed deep concern about numerous procedural irregularities reported during the proceedings.[45] The Secretary-General stated that the verdicts clearly did not meet basic standards of fair trial, particularly those that imposed the death penalty, and could undermine the prospects for long-term stability in Egypt.[46] Furthermore, in a joint statement, a group of human rights experts from the African Commission on Human and Peoples' Rights and the United Nations also expressed concerns about the mass trial in Egypt, and stated that such a "mockery of justice" would undermine the justice and reconciliation process in the country.[47]

C. Access to consular services for non-citizens

54. Access to consular services is an important aspect of the protection of non-citizens facing the death penalty abroad. Under international law, the denial of the right to consular notification leads to the violation of due process and the execution of a foreign national deprived of his or her right to consular services constitutes an arbitrary deprivation of life, in contravention of articles 6 and 14 of the International Covenant on Civil and Political Rights.

55. Reportedly, non-citizens, including migrant workers, remained disproportionately affected by the death penalty in the Asian and Middle Eastern regions. For instance, at least 149 people, including many non-citizens, convicted of drug-related offences are reportedly on death row in Indonesia; 247 Indonesians are on death row in other countries. In Malaysia, death sentences have been issued against at least 37 foreign nationals, mostly for drug offences. Saudi Arabia executed at least 37 non-citizens. The death penalty was disproportionately used against migrant workers from Asia and Africa. Some 125 Filipino migrant workers are on death row abroad. In the United Arab Emirates, about half of the death sentences pronounced during the reporting period were imposed on non-citizens, who make up over 80 per cent of the population. Sixty Mexicans are on death row in the United States.[48]

56. Several States have established specific programmes to support their nationals who are sentenced to the death penalty while abroad. For instance, the Ministry of Foreign Affairs of Indonesia established the Legal Aid and Protection of Indonesians Overseas Unit,

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[44] "Pillay alarmed at sentencing of 152 paramilitary personnel to death in Bangladesh", press release, 6 November 2013. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13953&LangID=E.

[45] "Egypt: Mass death sentences".

[46] Statement by the Secretary-General, "Secretary-General, alarmed by mass death sentence, youth movement ban in Egypt, stresses security implications for entire region", 28 April 2014 (SG/SM/15803-AFR/2873). Available from www.un.org/News/Press/docs/2014/sgsm15803.doc.htm.

[47] "Egypt: justice and reconciliation increasingly failing after second wave of mass death sentences", press release, 15 May 2014. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14596&LangID=E.

[48] Amnesty International, op. cit., pp. 18, 23, 24, 32, 39. See also statement of Mexico delivered at a side event of the Human Rights Council on 11 March 2014.

which has intervened in 247 cases of Indonesian nationals sentenced to death abroad.[49] The Office of the Undersecretary for Migrant Workers' Affairs of the Department of Foreign Affairs of the Philippines provided legal assistance to Filipino migrant workers facing death sentences abroad.[50] The Ministry of Foreign Affairs of Mexico established a legal support programme, known as the Mexican Capital Legal Assistance Program, for Mexicans facing the death penalty in the United States of America. Between its inception in 2000 and February 2014, the programme intervened in 1,001 cases of first-degree murder and the interventions led to the prevention or reversal of the death penalty in 878 cases.[51]

57. In the United States of America, in January 2014, the State of Texas executed Edgar Arias Tamayo, one of the 51 Mexican nationals subject to the International Court of Justice *Avena* decision.[52] Following the execution, the United States Department of State issued a statement regretting the decision of the State of Texas to proceed with the execution without review and reconsideration in accordance with the *Avena* decision, and noted that the execution illustrated the critical importance for the Congress to pass the Consular Notification Compliance Act, which would provide an additional mechanism for the United States to meet its international obligations.[53] Despite repeated national and international calls to suspend further executions, another Mexican national was executed in the State of Texas in April 2014, in violation of the *Avena* decision.[54]

VI. Use of the death penalty against children, persons with mental or intellectual disabilities and other vulnerable groups

A. Children

58. In September 2013, reaffirming the absolute prohibition in international human rights law of the execution of persons for crimes committed before they were 18 years of age, the Human Rights Council adopted resolution 24/12 in which it urged States to ensure that, under their legislation and practice, neither capital punishment nor life imprisonment were imposed for offences committed by persons under 18.

59. The legislation of 14 States allows the application of the death penalty to children. They are India (Jammu and Kashmir), the Islamic Republic of Iran, the Lao People's Democratic Republic, Malaysia, Maldives, Mauritania, Nigeria, Pakistan, Qatar, Saudi Arabia, Somalia, Tonga, the United Arab Emirates and Yemen. During the reporting

[49] Amie Fenia Arimbi, "247 Indonesians abroad under threat of death penalty", *Antara News*, 20 September 2013. Available from www.antaranews.com/en/news/90806/247-indonesians-abroad-under-threat-of-death-penalty.

[50] See joint submission of Migrante International and the Asia Pacific Mission for Migrants to the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families at its twentieth session, April 2014.

[51] Statement of the Ministry of Foreign Affairs of Mexico, 11 March 2014, Geneva.

[52] In the *Avena* decision, the International Court of Justice found that the United States had failed to provide consular notification and access to 51 Mexican nationals, as required under the Vienna Convention on Consular Relations.

[53] United States, Department of State, "Execution of Mexican national Edgar Arias Tamayo", 23 January 2014. Available from www.state.gov/r/pa/prs/ps/2014/01/220546.htm.

[54] United States, Mission to the Organization for Security and Co-operation in Europe, "Response to European Union on execution of Mexican national". Available from iipdigital.usembassy.gov/st/english/texttrans/2014/04/20140416297946.html #ixzz31WP1NQWE.

period, at least 4 of the 14 States, namely the Islamic Republic of Iran, Saudi Arabia, the State of Palestine (Gaza) and Yemen, executed children.

60. The United Nations Children's Fund (UNICEF) estimated that, in the Islamic Republic of Iran, over 160 persons, who allegedly committed crimes before the age of 18, face the risk of execution. The adoption of the revised penal code in 2013 in the country (specifically its child-related provisions that prohibit the application of the death penalty to children in certain cases) created a more enabling environment for the implementation of juvenile justice standards for children in conflict with the law. In partnership with the judiciary, UNICEF supported the implementation of child-related provisions of the revised penal code. It noted, however, that it was still too early to assess the extent to which the revised penal code contributed to reducing the number of capital sentences issued in cases involving juveniles. It recommended that the Government, prior to its adoption of the new penal code, ensure a special review of the cases of those children who had been sentenced to death.

61. Saudi Arabia reportedly executed two individuals for crimes they had committed before the age of 18. Saudi Arabia justifies the execution of juveniles on the ground that their childhoods end when they reach puberty, according to the concept of *bulugh* under sharia. It also carried out *qisas* (retaliatory punishment). UNICEF reported that the Saudi Shura Council had recently approved a law on the protection of children from abuse which defines children as individuals under the age 18, in accordance with the provisions of the Convention on the Rights of the Child. The law is currently awaiting the approval of the Head of State.

B. Persons with mental or intellectual disabilities

62. In accordance with international human rights standards, the death penalty should not be imposed on persons with mental or intellectual disabilities.[55] The judiciary in several States took the initiative of addressing the issue of the use of the death penalty against persons with mental or intellectual disabilities. For instance, the Supreme Court of India commuted the death sentences of two individuals to life imprisonment on the ground of mental illness. It also ruled that all death row prisoners should have regular mental health checks and appropriate medical care.[56] In Japan, in March 2014, a district court released Iwao Hakamada, who had been on death row since 1968 and developed mental illness as a result of the decades he had spent in isolation.

63. Some States, however, reportedly continued to execute persons with mental and intellectual disabilities. In the United States of America, after the Supreme Court rejected a stay of execution, the State of Florida executed an individual in August 2013 despite his decades-long history of mental illness.[57] In April 2014, the State of Texas executed Ramiro Hernández Llanas, a Mexican national whose IQ level fell within the parameters of intellectual disability. Despite precautionary measures issued by the Inter-American Commission on Human Rights in Mr. Hernández's case, the United States failed to preserve his life pending a petition before the Inter-American Court of Human Rights, in violation of its international legal obligations derived from the Charter of the Organization

[55] See E/2010/10 for detailed discussion on the relevant international standards.

[56] *Shatrughan Chauan and Anr v. Union of India and Ors*, writ petition (criminal) No. 55 of 2013, decided on 21 January 2014.

[57] Florida Department of Corrections *John Ferguson v. Secretary*, No. 13-5507.

of American States and the American Declaration of the Rights and Duties of Man.[58] The recent execution of persons with intellectual and mental disabilities in the country raised concerns about the implementation of the judgment of the Supreme Court in the case of *Atkins v. Virginia* (case No. 536 U.S. 304), which prohibits the execution of such individuals.

64. In May 2014, the United States Supreme Court issued another decision in *Hall v. Florida* (case No. 572 U. S. ____ (2014)) with regard to the use of the death penalty against persons with mental and intellectual disabilities. In that decision, the Court further elaborated the notion of the *Atkins* decision and held that it was unconstitutional to refuse to take into account mental factors other than an IQ test. It stated that the death penalty was the gravest sentence society might impose. Persons facing that most severe sanction must have a fair opportunity to show that the Constitution prohibits their execution.

VII. Human rights of children of parents sentenced to the death penalty or executed

65. In September 2013, the Human Rights Council held a panel discussion on the human rights of children of parents sentenced to the death penalty or executed. The panellists highlighted the devastating impact on children, including long-term damage to their mental health, when a parent is accused of a capital crime. They highlighted that the emotional trauma caused at the time of arrest continued even decades after the execution or the parent's release. The panel discussion addressed various areas requiring the adoption of measures: the best interests of the child and the provision to children of parents facing the death penalty of care, assistance, information and access to their parents on death row.[59]

66. The situation and the needs of those children have been increasingly taken into consideration by several United Nations bodies, including the Committee on the Rights of the Child, the Human Rights Council in its universal periodic review and the General Assembly. In September 2013, in concluding observations adopted following the review of a periodic report of Kuwait, the Committee on the Rights of the Child recommended that Kuwait assess and fully take into account the best interests of the child in judicial proceedings where parents are involved and when sentencing parents to death (CRC/C/KWT/CO/2, paras. 31 and 32). During the review of a periodic report of China, the Committee asked the Chinese delegation whether courts took into account the best interests of the child when imposing the death penalty on a parent (CRC/C/SR.1833, para. 21). In its list of issues for India, the Committee asked the Government to provide specific details on measures taken to guarantee the right of the child to have his or her interests taken as a primary consideration for children whose parents are involved in criminal proceedings, specifically in sentencing and cases involving capital punishment (CRC/C/IND/Q/3-4, para. 4). Subsequently, in its periodic report, India informed the Committee of the adoption by the Government of Rajasthan of a scheme to provide alternative care to children without parental care and support and that children whose parents received life imprisonments or death sentences were among those included in that scheme (CRC/C/IND/3-4, sect. 5, para. 35).

67. In January 2014, at its sixty-fifth session, in addition to asking questions relating to the sentencing and execution of child offenders (CRC/C/SR.1849, paras. 16, 22, 24, 26–32 and 38), the Committee on the Rights of the Child asked Yemen what support was provided

[58] Press release, "IACHR condemns execution of Ramiro Hernandez Llanas in the United States", 11 April 2014. Available from www.oas.org/en/iachr/media_center/PReleases/2014/036.asp.

[59] See A/HRC/25/33 for the summary report of the panel discussion.

to children of death row inmates and what measures were taken to ensure that they did not face discrimination as a result of their parents' situation (ibid., para. 38). At the same session, the Committee asked the Congo whether the judicial system made any provisions for children whose parents were on death row or serving lengthy prison sentences; what protection, if any, was afforded to them; and how their best interest was translated in that context (CRC/C/SR.1847, para. 58).

68. At the seventeenth and eighteenth sessions of the Working Group of the Universal Periodic Review, Member States sent written questions relating to the situation of children of parents under death row or executed to Afghanistan, China, Malaysia, Nigeria, Saudi Arabia, Viet Nam and Yemen.[60] Those written questions addressed issues such as: the number of individuals on death row; the number of individuals on death row with children and the number of affected children; the number of death sentences and executions since the previous universal periodic review and how many affected individuals have/had children; the support provided to those children; whether families, including children, have the right to visit or, if unable to visit, to communicate in other ways; whether the visiting/communication regime is the same as for other prisoners; whether family members have the right to be informed of an execution before it takes place and, if so, how are they informed and what is the notice period; and whether children and other family members of a person sentenced to death have the right to a final meeting before an execution is carried out. At the seventeenth session of the Working Group, Croatia recommended that Malaysia ensure that children without parental care due to parental incarceration or execution are provided for, including with support for physical and mental health (A/HRC/25/10, para. 146.185).[61]

69. In its resolution 68/147 on the rights of the child, adopted without a vote on 18 December 2013, the General Assembly acknowledged that a parent's deprivation of liberty, sentencing to death or life imprisonment had a serious impact on children's development, and urged States, in the framework of their national child protection efforts, to provide the assistance and support those children may require (para. 57).

70. Children of parents facing the death penalty abroad are also confronted with additional challenges: they require specific practical, emotional and/or financial assistance. Children who are in the same country as the sentenced parents may be imprisoned with their parent and need help to be repatriated to the country of origin or to stay near the parent, depending on factors such as the children's age and the availability of other suitable persons to take care of them.

71. In a statement delivered in March 2014, the Special Representative of the Secretary-General on Violence against Children noted that the loss of a parent is traumatic and irreversible but, unlike a natural death, when it is officially performed by the authorities of a country, it becomes particularly confusing and frightening for a child. Children find it hard to explain their situation, and are increasingly tempted to deny it and hide their feelings. In that regard, the Special Representative underscored that the sentencing of a parent to the death penalty compromises the enjoyment of a wide spectrum of children's rights. She also mentioned that there is enough evidence to recognize the urgency of ensuring a protective environment for children of parents sentenced to death or executed;

[60] The questions can be found on the relevant universal periodic review country pages: www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx.

[61] Malaysia undertook to respond to the recommendations no later than the twenty-fifth session of the Council, in March 2014.

preventing their discrimination and stigma, and providing them with the services and the recovery and reintegration measures they require.[62]

VIII. Conclusions

72. **The trend towards the universal abolition of the death penalty is continuing. However, numerous concerns remain with regard to the lack of respect for relevant international human rights norms and standards in States where the death penalty is still imposed. Until the death penalty is fully abolished, retentionist States must ensure that the death penalty is imposed only for those crimes that involve intentional killing. The death penalty should not be imposed for "drug offences", "consensual adult sex", "blasphemy" or any other acts that do not meet the threshold of "most serious crimes". States should abolish the mandatory death penalty, where it still exists. States must also ensure that the highest level of compliance with fair trial and other international human rights norms and standards are met in all death penalty cases.**

73. **The lack of data on the number of executions or individuals on death row is a serious impediment to debate on the abolition of capital punishment. It will also be important, for the effectiveness and transparency of such a debate, to ensure that the public has access to balanced information, including accurate information and statistics on criminality and the various effective ways to combat it, without resorting to capital punishment.**

74. **States that still use the death penalty on persons who committed crimes before the age of 18 must stop that practice. When the death penalty is abolished, they must avoid sentencing children to life imprisonment as an alternative punishment. States must take account of article 37 of the Convention on the Rights of the Child, which explicitly requires that deprivation of liberty be used only as a last resort and for the shortest appropriate period of time.**

75. **The effects of the death penalty system in its entirety, including the social, economic and psychological impact on the children and family members of those executed or under a death sentence, must be further examined. States that still use the death penalty should recognize the urgency of ensuring a protective environment for the children of parents sentenced to death or executed, preventing discrimination and stigma, and providing them with assistance for their recovery and reintegration.**

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[62] Statement delivered at a side event on "Children of parents sentenced to the death penalty or executed: developments, good practices and next steps" organized by Belgium, Mexico, Montenegro and Norway, in collaboration with the Quaker United Nations Office during the twenty-fifth session of the Human Rights Council, in March 2014.